Supreme Court, U.S.
FILED
JUN 1
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1479

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL MILL SERVICE and
THOMAS VAN DEN HANDEL,
Petitioners,

vs.

JAMES AUBUSCHON,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

IRA L. BLANK
Counsel of Record
LAURA J. KIPNIS
POPKIN & STERN
8182 Maryland Avenue
15th Floor
St. Louis, Missouri 63105
(314) 862-0900

Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 13305 Manchester Road 63131 314-231-4477

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Reply to Respondent's New Argument	1

TABLE OF AUTHORITIES

Page

Cases:

Avco Corp. v. Aero Lodge, I.A.M. & A.W., 390 U.S. 557 (1968) 2

Caterpillar Inc. v. Williams, 482 U.S. ____, 96 L.Ed. 2d 318 (1987) 2

Franchise Tax Bd. v. Laborers Vac. Trust, 463 U.S. 1 (1983) 2

No. 88-1479

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL MILL SERVICE and
THOMAS VAN DEN HANDEL,
Petitioners,

vs.

JAMES AUBUSCHON,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

The Respondent, at page 3 of his opposing brief No. 88-1479, has argued that the harms alleged in the Respondent's suit for malicious defamation "are capable of remedy only outside the scope of a collective bargaining agreement" and, therefore, that preemption of the Respondent's defamation claim, based on federal labor laws, "is clearly inappropriate." Respondent has cited no authority for this argument or the allegation that the Respondent's alleged injuries can only be adequately remedied "outside the scope of a collective bargaining agreement." Nonetheless, even if one were to assume for the sake of argument that the only avenue by which Respondent can obtain ade-

quate relief for his alleged injuries is a state law defamation claim, it does not follow that preemption of such a claim, based on federal labor laws, is inappropriate.

Respondent's argument places the proverbial horse before the cart. When a potential state law cause of action is preempted by federal labor laws, it means that no court has proper subject matter jurisdiction over the state law action. This Court has previously ruled that the "nature of the relief available *after* jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." *Avco Corp. v. Aero Lodge, I.A.M. & A.M.*, 390 U.S. 557, 561 (1968) (emphasis added). The threshold question, therefore, must be whether the court has jurisdiction over the claim and *not* whether the claim affords the preferred remedy or even any adequate remedy. A plaintiff's preference for a particular remedy, in other words, cannot create subject matter jurisdiction where it does not otherwise exist.

Thus, in *Avco Corp.*, this Court ruled that a claim based on §301 of the Labor Management Relations Act was properly removed to federal court even though the injunctive relief the plaintiff had sought could *only* be obtained in a *state* court proceeding. In so ruling, this Court specifically stated:

> the breadth or narrowness of the relief which may be granted under federal law and § 301 cases is a distinct question from whether the court has jurisdiction over the parties and the subject matter.

Avco Corp., 390 U.S. 557, 561 (1968); *see Caterpillar v. Williams*, 482 U.S. ____, 96 L.Ed. 2d 318, 326 n.4 (1987); *Franchise Tax Bd. v. Laborers Vac. Trust*, 463 U.S. 1, 23 (1983).

In light of this Court's prior rulings in *Avco Corp.*, *Franchise Tax Bd.* and *Caterpillar*, the Respondent's apparent preference for a remedy allegedly not available under federal labor laws is not a valid reason for denying Petitioners' Petition for a Writ of

Certiorari. The questions raised in this case remain important questions of federal labor law which should be resolved by this Court. Accordingly, Petitioners respectfully request that this Court grant the writ of certiorari.

Respectfully submitted,

Ira L. Blank
Counsel of Record
Laura J. Kipnis
Popkin & Stern
8182 Maryland Avenue
15th Floor
St. Louis, Missouri 63105
(314) 862-0900

Dated: May 31, 1989